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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,975	03/01/2002	Jean-Louis H. Gueret	08048.0026-00	2195

22852 7590 12/28/2005

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EXAMINER
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DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/084,975	<b>Applicant(s)</b> GUERET, JEAN-LOUIS H.	
	<b>Examiner</b> Robyn Doan	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-111 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-16, 20-27, 33-51, 55, 61, 62, 64-72, 75-88, 91-104 and 107-111 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 13,17-19,28-32,52-54,56-60,63,73,74,89,90,105 and 106.

## **DETAILED ACTION**

Applicant's remark filed 09/26/05 has been entered and carefully considered. Arguments regarding rejection 35 U.S.C. 103 (a) have not been found to be persuasive, therefore claims 1-12, 14-16, 20-27, 33-51, 55, 61, 62, 64-72, 75-88, 91-104, 106, 108-111 are rejected under the same ground rejections as set forth in the office action mailed 06/24/2005.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 20-27, 33-51, 61, 62, 64-72, 75-88, 91-104, 107, 108-111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (5937870) in view of Ashtary et al (5176156).

With regard to claims 1-3, 9, 22-27, 33-42, 96-98, 101-104 and 107-111, Gueret discloses a mascara brush (figs. 1-3) comprising a container (320) comprising a mascara product to apply to eyelashes, a wiper (321), a handle (323) attached to an end of a stem (101), a brush portion connected to one end portion of the stem (101.1), the one end of the stem having a longitudinal axis and a brush portion having a free end

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(104); the brush portion comprising a twisted wire core (103) having a left hand pitch (fig. 1d), at least part of the core being curved; the brush portion further having bristles of different lengths (fig. 1) comprising ends defining an envelope surface being asymmetrical about a midplane of the envelope surface; the brush portion is formed from a blank comprising a blank core and blank bristles defining a blank surface, an edge of the blank surface being nonrectilinear and the rectilinear edge portion being outwardly concave (fig. 1e). With regard to claims 4-8, 10-12, 20-21, 51, 67-68, 83-84, 99-100, Gueret also discloses the blank envelope surface being substantially axially, circularly symmetrical about the longitudinal axis of the core, the envelope surface and the brush portion having a maximum and a minimum cross section locating between axial ends of the envelope surface and the brush portion, the nonrectilinear edge portion being located in one of the first third and a last third of the length of the blank envelope surface (figs. 1a, b). With regard to claims 64-66, 69-72, 75-82, 85-88, 91-95, Gueret '870 also discloses the envelope surface (129b) being noncylindrical proximate a free end (at 128b) of a brush portion (120). Gueret does not disclose the free end of the brush portion not being aligned with the longitudinal axis of the one end portion of the stem and the brush portion comprising a core having a core free end, at least part of the core being curved such that a line to the core at any axial position along the core is not perpendicular to the longitudinal axis of the one end portion of the stem and a longitudinal axis of the core free end is not parallel to the longitudinal axis of the end portion. Ashtray et al discloses a mascara brush (fig. 2) comprising a stem (16) with two opposite ends, a brush portion (32) connected to one end (at 34) portion of the stem

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and the one end portion of the stem having a longitudinal axis and the brush portion having a free end that is not aligned with the longitudinal axis of the one end portion of the stem and the brush portion comprising a core (30) having a core free end (free end of brush 32), at least part of the core being curved (col. 3, lines 61-62) such that a line to the core at any axial position along the core is not perpendicular to the longitudinal axis of the one end portion of the stem and a longitudinal axis of the core free end is not parallel to the longitudinal axis of the end portion (fig. 2). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular brush portion as taught by Ashtary et al into the mascara brush of Gueret for the purpose of enhancing the ability of the device to curl the eyelashes. In regard to claims 43-50 and 61-62, the above apparatus is inherently seen in the existence method claims.

Claims 14-16 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Ashtary et al.

With regard to claims 14-16 and 55, Gueret in view of Ashtary et al disclose a mascara brush comprising all the claimed limitations in claims 1 and 43 except for the shape of the blank surface being frustoconical-shape, fish-like shape, hourglass-like shape. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to the shape of the blank surface being frustoconical-shape, fish-like shape, hourglass-like shape, since such a modification would have involved a mere change in the shape of the component.

Applicant has argued that Ashtary's reference does not show a brush portion having a free end that is not aligned with the longitudinal axis of one end portion of the stem and the rejections of claims 1, 43, 64, 80 and 96 were relied solely on the drawings of the prior art; this is not correct, in the remarks page 6, lines 3-6, Applicant has acknowledged that the brush portion (32, fig. 2) being slightly arched concavely along its longitudinal axis, this statement proves that because of the curvature configuration, the free end of the brush portion is not aligned with the longitudinal axis of one end portion (34) of stem (16). Applicant has also argued that neither Gueret nor Ashtary teaches the shape of the blank surface being a frustoconical-shape, fish-like shape or hourglass-like shape, however, since Applicant has failed to show the criticality of the shapes, it would have been obvious to one ordinary skill in the art to alter the shapes of the device as an obvious matter of design choice.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

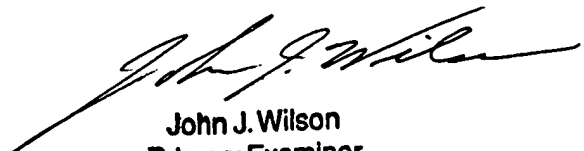
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
Examiner  
Art Unit 3732



John J. Wilson  
Primary Examiner